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COMBINED DECLARATION AND POWER OF ATTORNEY FOR PATENT AND DESIGN APPLICATIONS

ATTORNEY DOCKET NO.

630-401P

As a below named inventor, I hereby declare that: my residence post office address and citizenship are as stated next to my name; that I verily believe that I am the original, first and sole inventor (if only one inventor is named below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: * APPARATUS FOR CONTROLLING RECORDING AND REPRODUCTION
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the specification of which is attached hereto unless one of the following boxes is checked:

- The Specification was filed on _____ and was assigned Serial No. _____ and was amended on _____
 was filed as PCT international application number _____ on _____ and was amended under PCT Article 19 on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof, or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (six months for designs) prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows:

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below:

Prior Foreign Application(s)

Priority Claimed

Insert Priority
Information
(If appropriate)

6441/1993 (Number)	Korea (Country)	April 16, 1993 (Month/Day/Year Filed)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

All Foreign Applications, if any, for any Patent or Inventor's Certificate Filed More Than 12 Months (6 Months for Designs) Prior To The Filing Date of This Application:

Country	Application No.	Date of Filing (Month/Day/Year)
_____	_____	_____
_____	_____	_____

I hereby claim the benefit under Title 35, United States Code, §120, of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

(Application Serial No.)	(Filing Date)	(Status — patented, pending, abandoned)
(Application Serial No.)	(Filing Date)	(Status — patented, pending, abandoned)

*NOTE: Must be completed.

I hereby appoint the following attorneys to prosecute this application and/or an international application based on this application and to transact all business in the Patent and Trademark Office connected therewith and in connection with the resulting patent based on instructions received from the entity who first sent the application papers to the attorneys identified below, unless the inventor(s) or assignee provides said attorneys with a written notice to the contrary.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1-70

Full Name of First or Sole Inventor:
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 Insert Date This Document is Signed
 Insert Residence
 Insert Citizenship

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S T A T E M E N T

In summary, Petitioner LG Electronics (LG) undertook a transfer of the responsibility to pay maintenance fees. The transfer of responsibility occurred in early 1997. The responsibility to pay the maintenance fees and annuities for approximately 1,500 patents and applications was transferred from a plurality of individual law firms to one company, MARKPRO, which specializes in such activities.

U.S. Patent 5,587,789 (the '789 Patent) issued late in 1996, namely December 24, 1996. LG acted responsibly to ensure that all patents, issuing in 1996, were included in a list sent to MARKPRO. To this end, numerous letters were sent between LG and the various individual law firms, and between LG Headquarters and LG's various technical divisions. Several of the letters stressed the importance that the patent data needed to be carefully checked and cautioned that missing patent data could lead to the loss of a valuable patent right.

LG's experience with international mail delivery times and law firm processing times indicated that, on average, it takes about two months for LG to receive an issued U.S. Patent (from a domestic law firm) from the issue date. In an abundance of caution, LG decided to wait for four and one half months, until April 15, 1997, to verify that their list of patents included all of the patents issued in 1996.

The '789 Patent arrived at LG on April 16, 1997, one day after the final revised list of Patents was due back from the LG technical divisions to LG Headquarters. Therefore, the '789 Patent was never reported to MARKPRO, and MARKPRO did not know about the '789 Patent to pay the maintenance fee.

It is respectfully submitted that the facts and supporting documentary evidence listed below will show that:

1) LG has heretofore had a reliable computer docketing system. LG has not previously missed a maintenance fee. LG has not previously petitioned for acceptance of a late payment of a maintenance fee.

2) It was reasonable for LG to rely on MARKPRO to handle payments for their maintenance fees. The facts will show the high degree of professionalism and reliability of the MARKPRO company, who also oversees maintenance fee payments for many other well-known companies.

3) LG had well-trained individuals handling the transfer of responsibility from the individual law firms to MARKPRO, and a well-trained individual inputting patent data into LG's database.

4) Petitioner first became aware that the maintenance fee was not paid on May 12 or 13, 2003.

5) Petitioner has worked diligently to gather supporting documentary evidence and verified English translations in support of this Petition since becoming aware of the missed maintenance fee payment.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 2 of 10

Petitioner respectfully asserts that the attached copies of letters and memos (and their verified English translations) should establish the following facts A-D and 1-27:

EVENTS RELATING TO THE MAILING OF U.S. PATENT 5,587,789

- A. U.S. Patent 5,587,789 ("the '789 Patent") issued on December 24, 1996.
- B. The U.S. law firm of Birch, Stewart, Kolasch & Birch, LLP (BSKB) received the '789 Patent and forwarded the same to the Korean law firm of Park, Kim & Partner (PKP) along with a letter dated January 24, 1997.
- C. PKP received the '789 Patent on February 20, 1997.
- D. PKP forwarded the '789 Patent to the assignee, LG Electronics, Inc (LG). LG received the '789 Patent on April 16, 2003.

CHRONOLOGY OF ALL RELATED EVENTS

- 1. (July 26, 1996) LG Headquarters drafts an internal memo discussing a change in the present system of having individual firms pay the maintenance fees for patents. After the change, a company specializing in management of patent maintenance fees will handle maintenance fee payments of all LG patents. The policy change would save money and be more convenient, as reminders will be sent directly to the technology divisions of LG to determine whether their patents should be maintained.
- 2. (August 26, 1996) LG Headquarters sends a letter to PKP asking for a list of issued patents, from the PKP database. The letter includes a blank form upon which the patents are to be listed. The completed list is to be returned to LG Headquarters by September 2, 1996.
- 3. (October 4, 1996) LG Headquarters receives the lists of issued patents from PKP and other Korean law firms, formulates its own list of issued patents using LG's own database system, and then sends all the lists from the Korean law firms and from LG's own database system to MARKPRO.
- 4. (October 24, 1996) MARKPRO sends a letter to LG Headquarters. The letter includes a list of 1,397 of LG's patent cases complied by MARKPRO by comparing and verifying the lists from Korean law firms and from LG's own database system. MARKPRO asks LG Headquarters to check this list and make sure the list is accurate and complete.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 3 of 10

5. (October 31, 1996) LG Headquarters sends a letter to each technology division of LG. The letter includes the list of patents that was compiled and forwarded by MARKPRO on October 24, 1996. The letter instructs each technology division to review the list and make any needed corrections in red ink, so that the list accurately reflects the patents held. The corrections are to be returned to LG Headquarters by November 15, 1996. The letter cautions the technology divisions to "thoroughly check" the list for errors and missing data so as not to loose "precious patents registered with the investment of considerable expense and effort."

6. (October 31, 1996) LG Headquarters sends a letter to PKP. The letter thanks PKP for taking care of past maintenance fee payments. The letter states that to be more efficient, LG will allow an external company to manage maintenance fee payments in the future. The letter states that LG wishes to find out any discrepancies between PKP's database of issued patents and LG's database of issued Patents. The letter includes a list of patents with some discrepancies (e.g. missing data such as application number, patent number, issue date). The discrepancies were identified by MARKPRO in their letter dated October 24, 1996. The letter states that MARKPRO will assume the responsibility of making maintenance or annuity fee payments on issued or registered patents, and that PKP will make annuity fee payments on pending patents. The letter asks PKP to instruct U.S. law firms (e.g. BSKB) to stop paying maintenance fees because MARKPRO will handle the payments.

7. (November 4, 1996) Technical division CIT (managing the '789 Patent) responds to LG Headquarters' letter of October 31, 1996.

8. (November 15, 1996) PKP sends a memo letter to LG Headquarters. The letter states that PKP will check the list attached to LG's letter dated October 31, 1996, and return it with corrections and fill-in missing data.

9. (December 5, 1996) LG Headquarters sends a letter to MARKPRO with corrections to the listed patents.

10. (December 11, 1996) MARKPRO sends a letter to LG Headquarters. The letter confirms that MARKPRO received the list of corrections, and has incorporated the corrections into their patent list. The letter includes a corrected list of patents, and asks LG Headquarters to check the corrected list once again to see if any further revisions are needed.

11. (December 12, 1996) LG Headquarters sends a letter to each of their Korean law firms (e.g. PKP). The letter states that effective January 1, 1997, MARKPRO will handle the payment of maintenance fees. The Korean law firms are to make any maintenance fee payments which come due until the end of 1996. The Korean law firms are to instruct foreign law firms (e.g. BSKB) to stop making maintenance fee payments in view of the agreement with MARKPRO. The letter includes a list of patents attached to it. The letter asked the Korean law firms to check the list, make corrections to the list if needed.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 4 of 10

Further, the letter instructs if "registered patents for which your office filed the application are missing from the enclosed data, please enter the information as in the enclosed list and send it to me."

12. (December 16, 1996) LG Headquarters sends a letter to each of their technology divisions. The letter includes the updated list of the patents compiled thus far. The list includes those patents having maintenance fees due by the middle of 1997. LG Headquarters instructs the technology divisions to review the list and circle "yes" or "no" to indicate whether the maintenance fees are to be paid, and to return the list to LG Headquarters.

13. (December 17, 1996) Technical division CIT (managing the '789 Patent) sends a letter to LG Headquarters. The letter lists five patents up to 1997 in which the maintenance fees are not to be paid.

14. (December 24, 1996) The '789 Patent issues.

15. (December 30, 1996) PKP sends a letter to BSKB. The letter instructs BSKB not to pay maintenance fees for LG's patents in the future. The letter includes a list of patented cases handled by BSKB. The letter asks BSKB to check the list and inform PKP of any additional patented case prosecuted.

16. (January 22, 1997) LG Headquarters sends a letter to MARKPRO. The letter includes corrections to the patent list.

17. (January 24, 1997) BSKB sends a letter to PKP. The letter includes the '789 Patent. The letter was received by PKP on February 20, 1997.

18. (February 18, 1997) BSKB responds to PKP's letter of December 30, 1996, and indicates that five Patents were omitted in PKP's list of patents. The letter does not indicate that the '789 patent was omitted.

19. (February 20, 1997) PKP receives BSKB's letter of January 24, 1997.

20. (February 21, 1997) MARKPRO sends a letter to LG. The letter requests that LG verify some patent data regarding annual fees for foreign patents.

21. (March 18, 1997) LG Headquarters sends a letter to PKP. The letter includes a list of patents and asks PKP to verify that the Patent data is accurate.

22. (March 20, 1997) LG Headquarters sends a letter to MARKPRO. The letter replies to MARKPRO's February 21, 1997 letter and includes a list of patents, which include corrections to the previous lists. The latest U.S. patent on the list is U.S. Patent 5,584,191, which issued December 17, 1996 (only seven days prior to the '789 Patent at issue here).

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 5 of 10

23. (March 29, 1997) MARKPRO sends a letter to LG Headquarters. The letter includes an updated final list of approximately 1,500 patents for which MARKPRO will takeover responsibility for annuity and maintenance fee payments on LG's behalf.

24. (April 3, 1997) LG Headquarters sends a letter to each of their technical divisions. The letter includes the updated list of patents. The letter states that this is the final list of patents to be managed by MARKPRO. The letter asks the divisions to "check for anything to be revised, added, or deleted, and send it back to me. The relevant business units will be responsible for data errors." The letter repeats that the divisions are to "take special care." Any changes to the list are to be made in red ink and returned to LG Headquarters by April 15, 1997.

25. (April 16, 1997) LG receives the '789 Patent from PKP.

26. (February 27, 1998) LG sends a letter to MARKPRO. The letter advises MARKPRO of 331 patents that issued in 1997.

27. (July 28, 1998) LG files a reissue application, serial number 09/118,824, based on the '789 Patent. As an aside, it is respectfully submitted that the filing of the reissue application, as published in the Official Gazette, should have served some public notice function to alert the public that LG had intentions of maintaining patent rights in the '789 Patent.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 6 of 10

Petitioner respectfully asserts that the delay in timely payment of the maintenance fee for U.S. Patent 5,587,789 was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely.

1) Petitioner respectfully asserts that the maintenance fee payment and docketing system of the Assignee, LG Electronics, Inc. (previously Goldstar Co., Ltd., hereinafter referred to as LG) was heretofore reliable.

a) Since 1994, LG has used software to monitor and track their patent related data:

- from 1994 until 1997, LG used Centura software known as "Total Intellectual Property Information System."
- since 1997, LG has used Oracle, version 7.3.

b) To also illustrate the reliability of LG's maintenance fee docketing system, please also note that LG has heretofore never missed a maintenance fee payment, due to a docketing system oversight. Heretofore, LG has never filed a Petition to the USPTO, to accept a late payment of a maintenance fee. This statistic should be considered with the understanding that LG has, to date, obtained several thousand U.S. Patents.

c) Until 1997, LG relied upon its domestic representative law firms in Korea (e.g. Park, Kim & Partner) and foreign representative law firms (e.g. Birch, Stewart, Kolasch & Birch, LLP) to actually pay maintenance fees

d) Since 1997, LG has relied upon MARKPRO, a Korean company, to actually pay maintenance fees. The maintenance fee in question was due on December 24, 2000 (four year due date). Therefore, MARKPRO would have been responsible for paying the maintenance fee.

2) Petitioner respectfully asserts that it was reasonable for LG to rely on MARKPRO to pay the maintenance fee on LG's behalf.

a) MARKPRO manages patents for such well-known companies as: Apple Computer Inc, IBM, Dupont, Thomson & Thomson, JVC, LG, and Samsung.

b) MARKPRO uses a double entry-type software system, whereby two employees independently enter a customer's patent data. After the data is entered, the two inputs are compared. If the entered data do not match, an alert is indicated, and the data is reviewed for error.

c) MARKPRO further checks client provided data by comparing the client provided data (e.g. Patent number, issue date, applicant) to public databases, such as www.patent.gov.uk, www.jpo.go.jp, and www.delphion.com.

d) MARKPRO sends verifications of entered patent data to clients, and MARKPRO sends maintenance fee due date reminders to clients.

e) MARKPRO maintains an insurance policy for compensating clients in the event of a procedural error on the part of MARKPRO.

f) MARKPRO has been in business since 1992, and is a member of many intellectual property oriented organizations, such as AIPPI, LES, INTA, and AMCHAM.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 7 of 10

g) MARKPRO works in cooperation with CPA (Computer Patent Annuities) to pay patent annuities and maintenance fees worldwide.

h) MARKPRO manages approximately 200,000 Korean patents for various clients and approximately 45,000 foreign patents for various clients. For LG, MARKPRO manages approximately 9,296 Korean Patents and approximately 4,816 foreign patents.

3) Petitioner respectfully asserts that LG had reasonable procedures and a sufficiently trained and knowledgeable staff, responsible for entering Patent related data into LG's docketing system. However, by uncommon circumstance, the patent in question, U.S. Patent 5,587,789, was not reported to MARKPRO, and therefore MARKPRO was not aware of the patent so as to timely pay the maintenance fee.

a) LG was undertaking a transfer of responsibility for maintenance/annuity fee payments at the time the '789 Patent issued. The number of Patents involved in the transfer was approximately 1,500.

b) LG had extremely knowledge and well-trained managers coordinating the transfer of the responsibility to make maintenance/annuity fee payments to MARKPRO. These individuals corresponded multiple times to check and recheck the accuracy of the data concerning the approximately 1,500 Patents.

c) The letters between the LG managers, and between the LG managers and MARKPRO and outside counsel firms illustrate that reasonable steps were taken to ensure that the data concerning the patents was accurate and complete. The letters often reiterated that the patent data should be "carefully reviewed," and warned that inaccurate data could lead to the loss of a valuable patent right.

d) At least fifteen letters were sent which included attached listings of patents, requesting corrections and/or verifying corrections.

e) The technical divisions of LG returned a verified, final updated list of patents issued in 1996. The list was returned by April 15, 1997. (Item 24, above)

f) It is submitted that it was reasonable, at the time, to assume that patents issued in 1996 would have been received and entered into the LG docketing system by April 15, 1997. At the time, typical mail delays between the U.S. and Korea for these types of documents were approximately two months. LG waited four and one-half months before the final list of patents issued in 1996 was compiled.

g) On April 16, 1997, the '789 Patent, which issued in December 24, 1996, was received by LG. The '789 Patent was logged into LG's database by Ms. Kyung Suk Bhang. Ms. Bhang had been an employee of LG since late 1994, and since employed had been responsible for entering patent data into LG's docketing system. Ms. Bhang

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 8 of 10

received one month of "on-the-job" training during her first year, and receives 2 to 3 days of training each year regarding the LG database software and software upgrades.

h) Since the '789 Patent was entered into the docketing system after the final updated list of patents was verified and returned to LG Headquarters, the '789 Patent was unavoidably missed and not reported to MARKPRO for maintenance fee payments.

4) Petitioner respectfully asserts that the following circumstances made them aware that the maintenance was not timely paid on or about May 12 or 13, 2003.

The circumstances, which resulted in the discovery of the missed maintenance fee, stem from prosecution of a Reissue application, serial number 09/118,824, filed July 20, 1998. The reissue application had been allowed, and during the process of preparing the Reissue application for issue, Special Programs Examiner Krista Zele checked whether the required maintenance fees had been paid (in accordance with MPEP 1415.01). The USPTO database indicated that the maintenance fee had not been paid.

On April 28, 2003, Mr. Scott Lowe of Birch, Stewart, Kolasch & Birch, LLP (BSKB) received an informal facsimile from Examiner Thai Tran asking whether or not the maintenance fee had been paid, and if so, "to submit proof of timely payment-a post card receipt or the like." Mr. Lowe checked the publicly accessible USPTO web site to confirm the data indicating payment or nonpayment of the maintenance fee.

An inquiry was made within the firm of BSKB to see if a maintenance fee was paid by BSKB on behalf of LG for the '789 Patent. To this end, a discussion was held with Mr. Christain Pol, BSKB's maintenance fee staff person, and the maintenance fee file was ordered from off-site storage. A review of the file revealed that PKP had instructed BSKB, by a letter dated December 30, 1996, that BSKB was not responsible to pay the maintenance fees for LG's patents. The letters informed BSKB that the maintenance fees would be handled by an outside organization.

On May 12, 2003, Mr. Lowe sent an email to Mr. Yeo-Han Yun of LG inquiring as to whether or not LG had evidence that the maintenance fee had been paid. A copy of the email is attached.

On May 13, 2003, Mr. Lowe received an email from Mr. Yong-Cheon Kim of LG stating that, after some inquiry, it was discovered that the maintenance fee was not paid. **Therefore, petitioner first became aware that the Maintenance fee was not timely paid on May 12 or 13, 2003.**

5) Petitioner respectfully asserts that they have worked diligently since becoming aware of the missed maintenance fee payment in an effort to gather facts and evidence to support a Petition to accept late payment of the Maintenance fee.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 9 of 10

On May 14, 2003, Mr. Lowe sent an email to Mr. Yong-Cheon Kim. The email outlined some needed information to prepare a Petition to accept late payment of the maintenance fee.

On May 16, 2003, Mr. Lowe received an email from Mr. Saeng-Gyu Jeon of LG, which included a timeline outline, summarizing the event dates and circumstances.

On May 18, 2003, Mr. Lowe received a follow-up email from Mr. Jeon of LG, which included updates to the timeline outline.

On May 20, 2003, Mr. Lowe received an email from Mr. Jeon of LG. Ms. Esther Chong of BSKB sent a reply email to Mr. Jeon.

On May 21, 2003, Mr. Joseph Kolasch of BSKB received a letter from Mr. Sung-Soo Lee, Senior Manager of LG. Mr. Lowe spoke with Ms. Karen Ferriter of the USPTO petitions branch. Ms. Ferriter instructed Mr. Lowe that he should call Ms. Beverly Flanagan to discuss the Petition. Mr. Lowe left a voice mail message for Ms. Flanagan. Mr. Lowe sent an email to Mr. Jeon requesting evidence in the form of copies of letters, emails, and memos to support the timeline outline provided Mr. Jeon in his email of May 18, 2003. Mr. Lowe's email also asked several specific questions.

On May 22, 2003, Mr. Jeon sent an email to Mr. Lowe answering the questions. Mr. Lowe sent an update email to Mr. Jeon.

On May 23, 2003, Mr. Woon-Kyu Chang of LG sent an email to Mr. Lowe. Several letters and memos in support of the timeline outline were attached to the email. Mr. Lowe reviewed several sections of the MPEP and the case of In re Morgan, 26 USPQ2d 1392 (CAFC 1993).

On May 27, 2003, Mr. Lowe received an email from Mr. Woon-Kyu Chang of LG, and Ms. Esther Chong of BSKB sent a reply email to Mr. Chang.

On May 29, 2003, Mr. Lowe received a voice mail message from Ms. Flanagan of the Petitions Office of the USPTO.

On June 3, 2003, Mr. Lowe left a voice mail message for Ms. Flanagan. Further, Mr. Lowe sent an update email to Mr. Chang.

On June 4, 2003, Mr. Lowe had a discussion with Ms. Flanagan regarding the necessary contents of the Petition and was told that the Petitioner would need to file verified English translations of the documentary evidence. Mr. Lowe sent an email to Mr. Chang requesting answers to fourteen questions needed to draft the petition.

STATEMENT ON PETITION
Attorney Docket No. 2950-0141P
Page 10 of 10

On June 5, 2003, Mr. Lowe received several documents from Mr. Chang and answers to the questions. Mr. Lowe sent a follow-up email to Mr. Chang requesting verified English translations of the documentary evidence.

On June 6, 2003, Mr. Lowe started preparation of this Petition.

On June 10, 2003, Mr. Lowe received an email from Mr. Chang requesting that we have an independent translation firm prepare the verified English translations.

On June 12, 2003, Mr. Lowe finished a draft of the Petition and forwarded the documentary evidence to Drusts Associates of North Carolina for verified English translations. Mr. Chang sent an email to Mr. Lowe, and Mr. Lowe sent a reply email to Mr. Chang with the draft of the Petition.

On June 19, 2003, Mr. Lowe received the verified English translations from Drusts Associates. Mr. Lowe received an email from Mr. Chang with comments on the draft Petition.

On June 23, 2003, Mr. Lowe revised the Petition in view of comments received from Mr. Chang on June 19, 2003 and the verified English translations.

On June 24, 2003, the verified statements for signature by LG employees were prepared, and the final version of the Petition and verified statements were sent to LG for execution.

On June 25, 2003, minor revisions were made to the Petition by Mr. Lowe.

On June 26, 2003, the Petition was returned to LG for execution.

For the above stated reasons, Petitioner requests that this Petition to accept late payment of the Maintenance fee be granted.